COURT OF APPEALS
DECISION
DATED AND FILED

September 28, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP913 **Cir. Ct. No. 2009SC11774**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

SANDRA MURRAY,

PLAINTIFF-APPELLANT,

V.

RUSS DARROW MAZDA,

DEFENDANT-RESPONDENT.

APPEAL from orders of the circuit court for Milwaukee County: JOHN SIEFERT, Judge. *Affirmed*.

¶1 FINE, J. Sandra Murray, *pro se*, brought this small-claims action against Russ Darrow Mazda claiming in her small-claims complaint that Darrow improperly "topped off critical [brake] fluid[, which] caused contamination of rubber" in, apparently, the brake "master cylinder." Her complaint indicates that she was told that by "Car-X # 4906." Following a dismissal of her claim by the

small-claims court commissioner, Murray had a trial *de novo* in the circuit court, which also dismissed her claim, and denied her motion to re-open. She appeals that dismissal and, we assume, the circuit court's order denying her motion to re-open.

¶2 In her main brief on this appeal, Murray claims that she got into an accident because Darrow improperly topped off her brake fluid. In her statement of the facts, but without Record citation, she asserts: "Car X Kevin S. found out the brake master cylinder overfilled and the cap seal was swelled [and] contaminated brake hoses and bleed system." Her "argument" section is, in its entirety: "I purchased the car June 11, '08. I had the car inspected June 20, '08. Russ Darrow changed date from June 20, '08 to January 23, '08. Also missing 1–2 pages. October I used synthetic oil. Russ Darrow lied under oath."

¶3 In an appendix to her brief, she includes a letter dated April 14, 2009, from Kevin Sperling, of Buelow Automotive Car-X, who asserts that his shop inspected the car about which Murray apparently complains and that a "technician found the brake master cylinder overfilled and the cap seal was swelled."

¶4 According to the judgment roll, Murray testified at the trial *de novo* but did not call any other witnesses. The circuit court granted Darrow's motion to dismiss because Murray had not, according to the judgment roll, "present[ed] a prima facie case" that Darrow was liable on her claim. Murray has not given us a transcript of the trial *de novo*. The circuit court later denied her motion to re-open the dismissal. She claims in her reply brief that the circuit court should have permitted her to re-open the case so she could "subpoena Kevin Sperling."

¶5 There is no doubt that Murray feels aggrieved by what she claims was something that Darrow did. But plaintiffs who seek money from someone must show how that person, in the context of this case, was negligent. Thus, here, Murray claims that Darrow negligently filled her brake fluid cylinder. As the circuit court recognized, however, she cannot recover unless she proves that, and the Record on this appeal does not show that she did.

¶6 First, as Darrow points out, when the appellant (Murray here) contends that the circuit court did something wrong in dismissing a case because of a failure of proof, the appellant has to show what evidence the circuit court had before it that makes that dismissal error. *See* ***Duhame v. Duhame***, 154 Wis. 2d 258, 269, 453 N.W.2d 149, 153 (Ct. App. 1989) (When the appellate record is incomplete in connection with an issue raised by the appellant, we assume that the missing material supports the trial court's ruling.). As noted, the Record here does not have a transcript of the trial before the circuit court, so we do not know what Murray may have testified to, other than the assertions in her brief. Second, as the circuit court apparently recognized by denying Murray's motion to re-open the dismissal in order to subpoena Sperling, Sperling's letter, which we take as Murray's offer of proof, does not indicate that he has the required personal or expert knowledge as to what happened or how that affected Murray's brakes. Accordingly, Sperling could not have added anything to Murray's case. *See* WIS. STAT. RULES 906.02, 907.02 (witness must have personal knowledge about his or her proposed testimony) (witness testifying about technical matters must have demonstrated expertise in connection with the matters about he or she testifies).

¶7 Murray has not shown that the circuit court erred, either in dismissing her case or in denying her motion to re-open. Accordingly, we affirm.

By the Court.—Orders affirmed.[1]

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4

[1] We assume that Sandra Murray appeals from both the order of the circuit court dismissing her case and the circuit court's order denying her motion to re-open.